

# Programmatic Agreement with State Historic Preservation Officer

March 4, 2026

**Indian Health Service**  
2026 Annual Tribal Consultation





# National Historic Preservation Act of 1966

*Why do we follow it?*

- It's the law and it's regulatory (NHPA Section 106 - 36 CFR Part 800)
- Prior to the expenditure of any Federal funds, any and all Federal agencies must take into account the effect of the federally assisted undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register of Historic Places
- Afford the Advisory Council on Historic Properties an opportunity to comment
- Undertaking (definition):
  - Project, activity, or program funded in whole or in part... including Federal permits, licenses, or approval

# NHPA Required Consultation

- NHPA requires IHS to seek, discuss, and consider the view of other participants:
  - **Tribal Historic Preservation Officer**
    - Tribe has assumed SHPO responsibilities on tribal lands
    - 57 Tribes in California Area have a THPO
  - **State Historic Preservation Officer**
    - Off Tribal Lands or Tribe has not assumed responsibilities of SHPO
  - **Indian Tribes**
    - Those that attach religious and cultural significance, both on or off Tribal land
  - **Interested persons & members of the public**



# The Section 106 Consultation Process



- Four-step process
  - Initiate – notify SHPO or THPO of undertaking
  - Identify – if any historic properties exist in Area of Potential Effects
  - Assess – if any historic properties will be adversely impacted by the undertaking
  - Resolve – develop solutions to avoid, minimize or mitigate adverse impacts



*Over 90% of the time, there are no historic properties identified and over 95% of the time, there are no adverse impacts – but SHPO or THPO must review and concur every time.*

# What Are “Scattered Sites?”



- **Today’s discussion is just limited to “Scattered Sites” – not any other type of IHS projects**
- “Scattered sites” refers to water and sewer facilities for individual Native homes
- Includes the following:
  - Septic tank / drainfield system
  - Individual well and pump system
  - Individual spring box or creek intake
  - Connection to community water or community sewer system
  - Includes new construction, repairs or replacements of existing systems
- Does NOT include community water or sewer projects





# The Current Situation with SHPO

- IHS performs between 60 to 100 scattered sites Section 106 reviews with the SHPO per year.
- If ground disturbance is involved, the law requires that the project must go through Section 106 consultation with Tribes and the SHPO or the THPO.
- By law, the SHPO and THPO have 30 days from the date of receipt of our consultation documentation to concur or not concur with our findings.
  - The SHPO's office is short-staffed and IHS has not had a dedicated reviewer of our projects since March 2025. Our reviews nearly always go past 30 days.
- **California Office of Historic Preservation is now trying to ask us additionally to conduct archaeological study with subsurface field inventory for every site – will add another 120+ day delay to serve each home.**
  - **No other state's Historic Preservation Officer is requesting an archaeological study for scattered sites – this is not required by law.**
- Most Tribal applicants are either out of water or having failing septic systems that need repair or replacement – delays hurt the health and quality of life of the applicants.
  - **Literally people with no water in their homes or raw sewage in their yard.**
- **This is 60-100 projects a year being delayed for 30+ days (which may stretch to 120+ days under new SHPO guidance) for routine projects with no adverse effects, where basic health and sanitation are on the line.**

# Bringing it to Reality

- One homeowner has been waiting since October for SHPO to clear her site. Her septic system is overloaded and sometimes overflows. She has piped all the gray water directly on the ground to prevent the raw sewage overflows (see pictures).
- Another homeowner had a failing septic system and 5 children. SHPO's four-month delay led to her taking out a loan to pay for the septic replacement herself. Now her well is failing and she has no water.
- A third homeowner has a failing well – the Tribe is hauling him water every week at great expense of their own resources, because he has no other source of water. Been waiting for several months for SHPO approval.
- There are literally dozens of cases like these all up and down the state NOW, including homes still rebuilding after wildfire losses.



# Programmatic Agreements (PA)

- The Section 106 regulations allow Federal agencies to tailor the “process” for an entire program that may have minimal or no adverse effects on historic properties.
- A "program PA" differs from the standard review process for projects that may have similar or repetitive effects on historic properties.
- Whereas the “process” must go through consultation for every ground disturbing project, the PA can bypass consultation.
- A PA can streamline the consultation process by not having to consult with the SHPO if executed by the parties.
- A Programmatic Agreement may outline an expedited review process for Section 106, list activities that are exempt from review by the SHPO and give standard mitigation measures that may be used to resolve adverse effects.
- IHS scattered sites are typically involve a very small surface area or ground disturbance APE but can take 30+ days (proposed to jump to 120+ days) for SHPOs concurrence.



# Proposed PA between IHS and SHPO



- Seeks to streamline SHPO approval process, provided the following conditions are met:
  - Only applies to scattered sites type projects (Appendix A)
  - Always need to consult with affected Tribes – **no change**
  - IHS will request a CHRIS report to identify historic properties within APE – **no change**
  - If any historic properties are present, SHPO will be consulted – **no change**
  - Only if no historic properties are found, IHS will bypass requesting SHPO approval - **change**
  - IHS will still follow regulatory requirements if any possible historic properties are discovered, and will still follow NAGPRA if any human remains are discovered – **no change**
- Note: this PA does NOT apply to Tribes that have a THPO

**PROGRAMMATIC AGREEMENT  
AMONG  
CALIFORNIA AREA OFFICE - INDIAN HEALTH SERVICE,  
AND THE  
CALIFORNIA OFFICE OF HISTORIC PRESERVATION,  
REGARDING OPERATIONS  
FOR THE  
SANITATION FACILITIES CONSTRUCTION PROGRAM  
FOR  
SCATTERED INDIAN HOMES THROUGHOUT CALIFORNIA**

**WHEREAS**, the California Area Office (CAO), including its Districts and field offices pursuant to the provisions of Section 7(a) of Public Law 86-121 (42 U.S.C. §2004) provides financial assistance for scattered Indian homes through the Indian Health Service Sanitation Facilities Construction Program (hereinafter “Program”); and,

**WHEREAS**, Public Law 86-121 authorizes the IHS to construct, improve and extend essential sanitation facilities including domestic and community water supplies and facilities, and sewage and waste disposal facilities together with necessary appurtenances and fixtures for Indian homes, communities and lands; and,

**WHEREAS**, the provision of Federal financial assistance is defined as an undertaking at 36 CFR Part 800.16(y) in support of applicant’s request for such services and activities performed under this Program subject to Section 106 of the National Historic Preservation Act (NHPA), as amended and its implementing regulations codified at 36 C.F.R. Part 800; and,

**WHEREAS**, the Program provides onsite water and sanitation facilities at new, or like-new and/or existing Native American residences located throughout California. Construction activity may include the installation of onsite wells, spring catchment systems, creek intake structures, septic systems, and service line piping to connect to existing community water and sewer systems; and,

# In Conclusion



- **IHS is seeking formal approval from Tribal Leaders for this proposed Programmatic Agreement to move forward**
- We already brought this issue to CATAC in January, and they recommended we bring it to Tribal Leaders
- We have also engaged the Governor’s Tribal Affairs Secretary on this topic
- The vast majority of IHS scattered site reviews resolve with SHPO concurrence and a Finding Of Effect of “No Historic Properties Affected”
- A PA would streamline the process, expedite routine reviews of projects with limited or no effects, and thus result in both time and cost savings
- It would allow IHS to complete scattered sites construction projects faster; less delay for Tribal members to receive necessary water and wastewater facilities



# Discussion Time

Do California Tribal  
Leaders Support IHS  
entering into a  
Programmatic Agreement  
with SHPO for Scattered  
Sites?

# Questions and Discussion



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